IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 246 of 2001
With
CRIMINAL REVISION APPLICATION No. 552 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
ANIL PRAVINCHANDRA RANA & 2 - Opponent(s)

==========

Appearance :
Criminal Appeal No.246/2001.
MR IM PANDYA, APP for Appellant
NOTICE SERVED for Opponent(s) : 1 – 3.

Criminal Revision Application No.552/2000
MR UM Panchal for the applicant
Mr IM Pandya for respondent No.1

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/04/2006

ORAL JUDGMENT

1.Criminal Appeal No.246 of 2001 has been filed by the

State challenging the order of acquittal passed by the learned Judicial Magistrate, First Class, Surat by his judgment dated 24.11.2000 rendered in Criminal Case No.7594 of 1995. Criminal Revision Application has been filed by Kirit Harjivanbhai Rana, original complainant who is also aggrieved by the very same judgment. These proceedings have been ordered to be heard together. Accordingly, I have heard learned APP Shri IM Pandya for the State and learned advocate Shri UM Panchal for the applicant in the Criminal Revision Application.

2. For an alleged incident of 9.9.95, a criminal complaint came to be filed against the accused making allegations of having committed offence punishable under section 323, 324, 504, 294 read with 114 of the Indian Penal Code and under section 135 of the Bombay Police Act.

3. Broadly stated, the case against the accused persons was that on 9th September, 1995, when the complainant along with his brother was returning home after completion of days work at about 9.00 p.m. on scooter and was parking his scooter near his house, accused No.1 Anil Pravinchandra Rana was standing there talking to his friend. Since the bicycle of his friend was parked in front of the house of the complainant, he

requested that the cycle be shifted upon which accused No. 1 started abusing. Upon being told not to use bad words, he went to his house and fetched a hockey stick and without any further provocation, gave a stick blow with his hockey stick on the head of the brother of the complainant. Immediately thereafter complainant's uncle Natwarbhai (accused No.3) and his son Pankajkumar (accused No.2) came down from their Houses. Pankaj had a stick in his hand. Natwar had a hockey stick with him. Accused No.2 Pankaj gave a blow with his stick on the nose of Kiritbhai whereupon their father intervened during which scuffle he received injury on the first finger of his right hand. They thereupon went to Salapatpura Police Station and thereafter received treatment at the Civil Hospital.

4. On the basis of the above allegations, the police authorities conducted an investigation and eventually, the Judicial Magistrate, First Class, upon conclusion of trial gave the judgment on 24.11.2000 acquitting all accused persons of the charges leveled against them.

5. During the course of the trial, the prosecution examined the complainant, his father, one Nandkorben as also the doctor who had given the treatment to the injured persons.

6. Upon evaluation of the evidence, the learned Judge came

to the conclusion that the charges are not proved. Though he did agree that the brother and the father of the complainant did receive certain injuries, it was not possible to conclude as to who had caused such injuries. The learned Judge noted the following salient features of the case which convinced him to come to the conclusion that the accused persons cannot be convicted of the offences charged against them.

(i) There is old animosity between the complainant and his witnesses on one side and the accused persons on the other side with respect to certain property disputes.

(ii) The prosecution did not examine a single independent eye witness to prove the charges.

(iii) From the evidence of the doctor, it could be seen that the complainant and other witnesses did receive injuries, however, it is not established that the injuries were caused by the accused.

(iv) The hockey stick which was collected from the scene of offence as a muddamal article could not be identified by the complainant or other witnesses.

(v) Considering the nature of evidence, considering that the accused and the complainant are near relatives and considering the cross-examinations of the witnesses, the learned Judge was of the opinion

that though some incident did take place, on account of weak evidence, it is not possible to convict the accused persons.

7. Having heard the learned APP for the State and learned advocate Shri Panchal for the original complainant and having perused the oral as well as documentary evidence on record, I have examined the validity of the decision of the learned Trial Judge.

8. At the outset, I find that the learned Judge has not referred to the depositions of the complainant and other eye-witnesses or that of the doctor even briefly in his judgment to enable the learned Judge to come to the conclusion that there were material contradictions in the cross-examination of such witnesses, which was the bare minimum requirement. He ought to have at least briefly referred to the gist of the depositions of such witnesses. The learned Judge ought to have at least summarised the evidence on record. Having said that, however, it is the duty of this Court to find out whether the judgment of acquittal is required to be upturned. For the said purpose, it would be necessary to examine independently whether any order of conviction can be recorded against the accused persons bearing in mind the limitation of scrutiny that this Court would undertake in an appeal against acquittal.

9.Before doing that, it would be necessary to briefly note some of the judicial pronouncements on the aspect of scope of acquittal appeal.

9.1In the case of Ramabhupala Redy v. State of A.P., AIR 1971 SC 560, the Hon'ble Supreme Court reiterated the principles governing the appeals against acquittal. In para 13 of the decision, following observations were made:

> “13. The scope of an appeal against an order of acquittal has been the subject of some controversy in Courts for a long time. But that controversy is now settled by the decision of this Court in Sanwant Singh v. State of Rajasthan, (1961) 3 SCR 120 = (AIR 1961 SC 715). In that decision this Court summarised the legal position thus:
>
> 1. an appellate Court has full powers to review the evidence upon which the order of acquittal is founded;
>
> 2. the principles laid down in Sheo Swarup's case, 61 Ind App 398= (AIR 1934 PC 227 (2)) afforded a correct guide for the appellate court's approach to a case disposing of such an appeal;
>
> 3. the different phraseology used in the judgments of this court such as:
>
> (a) "substantial and compelling reasons"
>
> (b) "good and sufficiently cogent reasons";
>
> (c) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its

> order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified.”

In para 14 of the decision, it was further observed that “to these tests we may add, as laid down by this Court in several decisions that the appellate court should also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal. If two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the findings of the trial court”.

9.2In the case of State of Punjab v. Phola Singh, (2003) 11 SCC 58, the Hon'ble Supreme Court made the following observations:

> “9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is

ignored, a duty is cast upon the appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See Bhagwan Singh and others v. State of Madhya Pradesh, (JT 2002 (3) SC 387). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and another v. State of Maharashtra, (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat, (1996 (9) SCC 225), Jaswant Singh v. State of Haryana, (JT 2000 (4) SC 114) and State of Punjab v. Karnail Singh, (2003 AIR SCW 4065).”

10.Bearing in mind the above judicial principles, if one examines the evidence on record, I find that :

(1) There is no dispute about the fact that the complainant and his family are closely related to the accused persons;

(2) There have been long standing property disputes between the parties;

(3) Admittedly the dispute took place in a locality where there were other persons residing;

(4) At about 9.00 p.m. when the alleged incident took place, surely the same would have attracted the attention of number of persons residing in the neighbourhood. In fact it has come on record that number of persons had gathered when the incident was

taking place. However, no independent eye-witness was examined by the prosecution.

(5) Doctor in his deposition has clearly stated that though the injured was bleeding from his nose, there were no external injuries on the nose.

(6) There was sufficient confusion about the weapon used by the aggressors.

(7) It was recorded that a hockey stick was recovered in broken condition. If the blows were given with hockey stick with so much force as to break the same into two, surely the resultant injury would have been far more serious.

(8) Most of the injuries were superfluous and did not cause any lasting damage to the injured persons.

Considering all these aspects of the matter, the accused persons deserve the benefit of doubt as it is not possible to conclude against them that they were the ones who caused such injuries.

11. In the nutshell, though I find that the learned Trial Judge disposed of the issues arising in this case in somewhat summary fashion when detailed appreciation of evidence on record was called for, having

independently examined the evidence, and having noted the above salient features of the case, bearing in mind the well-settled and well-established judicial principles governing acquittal appeals, I do not find any possibility of interference in this case and to upturn the findings of acquittal recorded by the learned Trial Judge and to record conviction against the accused persons.

12. In the result, Criminal Appeal filed by the State is dismissed. Bail bond stands cancelled. Criminal Revision Application filed by the complainant is also rejected. Rule is discharged.

(Akil Kureshi,J.)

(vjn)